IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 547 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

NARAN KARSHAN PATEL

Appearance:

1. Criminal Appeal No. 547 of 1992

Ms. Hansa Punani, APP, for the appellant

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 28/07/2003

ORAL JUDGEMENT

1. In this appeal under Section 378 of the Code of Criminal Procedure, the State of Gujarat has challenged

the judgment and order dated March 13, 1992 passed by the learned Judicial Magistrate, First Class, Mandvi, in Criminal Case No.576 of 1987, by which, the respondent came to be acquitted for the offences punishable under Sections 7 and 16 of the Prevention of the Food Adulteration Act, 1954 ('Act' for short).

2. The prosecution case, in short, be summarized as under: On October 22, 1986, at 12.15 hrs, Mr. R.P. Christian, who was duly appointed by the Notification issued by the Health and Family Welfare Department to act and perform duties as Food Inspector in all the local areas of the State of Gujarat, had inspected the shop of the respondent known as 'Umiya Store' situated at village Beraiya, Taluka Mandvi, District Kutchh. The Food Inspector had called two panchas for drawing samples of ground-nut oil from the shop of the respondent. The respondent, Naran Karshan Patel, had disclosed before the Food Inspector that he was the sole owner of the said shop. The Food Inspector had collected 375 grams of ground-nut oil by paying price of it. The said ground-nut oil was filled in three glass bottles and a panchanama of taking the sample and filling it in the glass bottles was drawn in the presence of the panchas as per the procedure prescribed under the Act and the Prevention of Food Adulteration Rules, 1955 ('Rules' for short). The Food Inspector had forwarded one sample to the Public Analyst for finding out the contents of the ground-nut oil. On receipt of the report of the Public Analyst, which indicated that the sample did not conform to the standard prescribed under the Act and the Rules, the Food Inspector, after obtaining sanction from the Competent Authority to launch prosecution against the respondent, had lodged a complaint against the respondent in the Court of learned Judicial Magistrate, First Class, Mandvi, for the offences stated hereinabove, which came to be numbered as Criminal Case No.576 of 1987.

3. To prove the case against the respondent, Mukesh Amrutlal Saraiyya, who had filed complaint against the complainant was examined at Exh.9; Mr. R.P. Christian, who had inspected the shop of the respondent was examined at Exh.38 and panch Karsan Karamshi was examined at Exh.46. The Food Inspector had produced documentary evidence to prove the charge against the respondent. The charge Exh.42 was framed against the respondent for the offences punishable under Sections 7 and 16 of the Act. The charge was read over and explained to the respondent, to which the respondent pleaded not guilty and claimed to be tried.

4. The learned Magistrate, on appreciation of oral and documentary evidence, concluded that (i) sanction to prosecute the respondent was not legal and valid; and (ii) the Food Inspector at the time of collection of sample had not followed the mandatory provision of Rule 14 of the Rules. On the basis of the abovereferred to conclusions, the learned Magistrate acquitted the respondent from the charge framed against him, which has given rise to filing of this appeal by the State of Gujarat.

5. Learned Additional Public Prosecutor, Ms. Hansa Punani, has taken me through the entire record and proceedings produced at the trial. I have minutely scanned through the entire record and proceedings.

6. Learned Additional Public Prosecutor has strenuously urged that the sanction to launch the prosecution against the respondent accorded by the Local Authority was legal and valid as per decision of the Supreme Court in the case of Suresh H. Rajpur & others vs. Bhartiben Pravinbhai Soni & others, reported in (1996) 7 Supreme Court Cases p.199. In view of the above legal position, the finding of the learned Chief Judicial Magistrate that there was no valid sanction deserves to be quashed and set aside.

7. However, the acquittal of the respondent deserves to be confirmed on the ground that the Food Inspector had not followed the mandatory provision of Rule 14 of the Rules. The oral testimony of Mr. Christian does not indicate that he had personal knowledge about the cleaning of bottles in which the samples were filled in. He had no information or knowledge as to who had cleaned those bottles and when. It would, therefore, be a matter of doubt whether the bottles were really cleaned or not. The panch, Karsan Karamshi who was kept present at the time of drawing of the panchanama of collection of ground-nut oil, had no knowledge whether the bottles were cleaned or made dry before filling ground-nut oil. It must also be stated that at the time of taking sample, the Food Inspector had first filled the sample in one utensil which was not cleaned and dried. At the time of inspecting the shop of the respondent, the Food Inspector was accompanied by a peon but the said peon was also not examined to show whether the bottles, in which the sample of ground-nut oil was filled in, were cleaned and dried or not. It is required to be noted that duty is cast upon the prosecution not only to comply with the mandatory provision of law by using clean and dry bottles

for storing the sample but also to satisfy the Court by leading evidence at the Trial Court that the bottles used were clean and dry. Breach of Rule 14 of the Rules, which is mandatory in nature, would vitiate the proceedings. Similar view has been taken by this Court

(i) in the case of M.B. Risaldar vs. Radheshyam, reported in 1980 (2) G.L.R.136;

(ii) in the case of State of Gujarat vs. Bhupendra M. Mehta, reported in 1999 (1) G.L.H. 227; and

(iii) in the case of Gangadhar Y. Ramekar vs. Mukeshbhai B. Shah, reported in 1999 (1) G.L.H. 237;

8. As a result of foregoing discussion, the appeal fails and is dismissed. The order of acquittal dated March 13, 1992 passed by the learned Judicial Magistrate, First Class, Mandvi, in Criminal Case No.576 of 1987, is confirmed.

(M.H.Kadri, J.)

(swamy)